

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs.

Case No. 1995-0696-FC

MICHAEL JEROME FRANKLIN,

Defendant.

OPINION AND ORDER

Defendant has filed a motion for relief from judgment. The People request the Court deny Defendant's motion.

On February 24, 1995, a felony warrant and complaint was filed against Defendant, charging him with three counts of criminal sexual conduct, first degree, contrary to MCL 750.520b(1)(d). On November 27, 1995, a jury returned a verdict finding Defendant guilty of one count of first-degree criminal sexual conduct, and two counts of criminal sexual conduct in the third degree. On March 11, 1996, Defendant was sentenced to serve 20 years on the first-degree criminal sexual conduct conviction, and 15 years each for the two third degree criminal sexual conduct convictions. The sentences were to be served concurrently.

Defendant contends that a jurisdictional defect occurred, and that his conviction should be set aside on the basis that he was sent to jail at the age of fifteen without a probate/juvenile hearing. Defendant contends that he was denied effective assistance of counsel because his trial counsel failed to seek a juvenile hearing. Defendant also contends that the trial court erred in denying his motion to sever his trial from his co-defendant's trial. Defendant further contends



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that jurisdictional error occurred by the trial court in allowing his co-defendant's confession into evidence.

When reviewing a motion for relief from judgment, the Court initially examines the motion together with all the files, records, transcripts, and correspondence relating to the judgment under attack. MCR 6.504(B)(1). If it plainly appears from the face of the material described in subrule (B)(1) that the defendant is not entitled to relief, the Court shall deny the motion without directing further proceedings. The order must include a concise statement of the reasons for denial. MCR 6.504(B)(2). If the entire motion is not dismissed under subrule (B)(2), the Court shall order the prosecuting attorney to file a response as provided in MCR 6.506, and shall conduct further proceedings as provided in MCR 6.505-6.508. MCR 6.504(B)(4). The Court may expand the record by including any additional materials deemed relevant to the decision on the merits of the motion, including affidavits and documents. MCR 6.507(A). The Court may make a decision after reviewing the motion, response, expanded record, and determine whether an evidentiary hearing is required. MCR 6.508(B). Defendant has the burden of establishing entitlement to the relief requested. MCR 6.508(D).

To justify reversal under either the federal or state constitutions, a convicted defendant must satisfy the two-part test articulated by the United States Supreme Court in *Strickland v. Washington*, 466 US 668; 104 S Ct 2052; 80 L.Ed.2d 674 (1984). See *People v. Pickens*, 446 Mich 298, 302- 303; 521 NW2d 797 (1994); *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001). "First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not performing as the 'counsel' guaranteed by the Sixth Amendment." *Strickland, supra* at 687. In so doing, the defendant must overcome a strong presumption that counsel's performance constituted sound

trial strategy. *Id.*, at 690. "Second, the defendant must show that the deficient performance prejudiced the defense." *Id.*, at 687. To demonstrate prejudice, the defendant must show the existence of a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *Id.* at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* Because the defendant bears the burden of demonstrating both deficient performance and prejudice, the defendant necessarily bears the burden of establishing the factual predicate for his claim. See *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

The Court will first address Defendant's argument that a jurisdictional defect occurred because he was sent to jail at the age of fifteen without a probate/juvenile hearing. Defendant relies upon *People v Dunbar*, 423 Mich 380; 377 NW2d 262 (1985) to support his argument. *Dunbar*, however, was decided prior to the enactment of the "automatic waiver" of juvenile defendants for certain juvenile violations. MCL 600.606, effective October 1, 1988. In *People v Veling*, 443 Mich 23; 504 NW2d 456 (1993), the Michigan Supreme Court held that a prosecutor can try a juvenile in adult circuit court without a waiver from the probate court as previously required by MCL 712A.4(1). At 26-27, n. 2. Since Defendant was charged with criminal sexual conduct in the first degree, the automatic waiver provision contained in MCL 600.606 was appropriate. See MCL 600.606(2). Consequently, Defendant's argument is without merit, and effectively undermines Defendant's argument of ineffective assistance of counsel.

The Court will next address Defendant's arguments that his Fifth Amendment rights were violated by the Court's failure to sever trial, and his Sixth Amendment rights were violated by the Court's admission of his co-defendant's confession that implicated him. The Court is satisfied that Defendant has failed to establish that his constitutional rights were violated. A

party may not merely announce their position, then leave it to this Court to unravel their arguments and search for authority to support or reject their position. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). Accordingly, cursory treatment with no citation to relevant supporting authority is appropriate. *Silver Creek Twp v Corso*, 246 Mich App 94, 99; 631 NW2d 346 (2001). Consequently, Defendant's motion for relief from judgment should be denied.

Based upon the reasons set forth above, Defendant's motion for relief from judgment should be denied. In compliance with MCR 2.602(A)(3), the Court states this matter remains closed.

IT IS SO ORDERED.

JMB/kmv

DATED: August 10, 2006

cc: Robert Berlin, Asst. Prosecuting Attorney

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JAMES M. BERNAT, Circuit Judge